

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KENNETH L. TEPPER, IN HIS CAPACITY
AS THE LIQUIDATION TRUSTEE FOR
THE GFGI LIQUIDATION TRUST,

Plaintiff,

v.

KEEFE, BRUYETTE & WOODS, INC. and
KBW, INC.,

Defendants.

CIVIL ACTION NO. 3:11-cv-2087-L

Hon. Sam A. Lindsay, U.S.D.J.

**PLAINTIFF’S OBJECTIONS TO THE FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE
REGARDING DEFENDANTS’ MOTION TO DISMISS**

Plaintiff, Kenneth L. Tepper (“Liquidation Trustee” or “Plaintiff”), in his capacity as the Liquidation Trustee for the GFGI Liquidation Trust, respectfully submits Plaintiff’s Objections to the Findings, Conclusions and Recommendation of the United States Magistrate Judge Regarding Defendants’ Motion to Dismiss.

INTRODUCTION

1. On May 25, 2012, The Honorable Renee Harris Toliver, United States Magistrate Judge (the “Magistrate Judge”), issued her *Findings, Conclusions, and Recommendation of the United States Magistrate Judge* [Docket No. 42] (the “Recommendation”) in relation to Defendants’ *Motion to Dismiss Plaintiff’s Original Complaint* [Docket No. 25] (the “Motion to Dismiss”).

2. Plaintiff hereby objects to certain aspects of the Recommendation for the reasons set forth herein and in the *Memorandum of Law in Support of Plaintiff’s Objections to the*

Findings, Conclusions, and Recommendation of the United States Magistrate Judge Regarding Defendants' Motion to Dismiss ("Plaintiff's Brief") filed contemporaneously herewith. Plaintiff notes that, instead of filing a wholly-duplicative appendix of materials that are already on record with the Court, Plaintiff cites to previously-filed appendices in this case in Plaintiff's Brief – namely, *Plaintiff's Appendix to Memorandum of Law in Opposition to Defendants' Motion to Dismiss Plaintiff's Original Complaint* [Docket No. 36] (referred to as "Pl. App." in Plaintiff's Brief); and Defendants' appendix which is attached to the *Declaration of Thomas J. Kavalier with Appendix of Exhibits in Support of Defendants' Motion to Dismiss the Original Complaint* [Docket No. 27] (referred to as "Def. App." in Plaintiff's Brief).

OBJECTIONS

3. Pursuant to the Recommendation, the Magistrate Judge has recommended that the Motion to Dismiss be denied in relation to Plaintiff's fraudulent transfer claim (Count I) and breach of contract claim (Count III) of *Plaintiff's Original Complaint* [Docket No. 1] (the "Complaint"). While, for reasons more fully set out in Plaintiff's Brief, Plaintiff submits that the Magistrate Judge has erroneously applied the unduly stringent and restrictive "specific and unequivocal" test to the preservation/retention of claims by the Liquidation Trustee against non-creditor/non-voting third parties, the Plaintiff is supportive of the recommended denial of the Motion to Dismiss in relation to Counts I and III of the Complaint.

4. The Magistrate Judge has further recommended, however, that the Motion to Dismiss be granted in relation to Plaintiff's claims for violation of the U.S. securities laws (Count II) and breach of the duty of good faith and fair dealing (Count IV) of the Complaint. For reasons more fully set out in Plaintiff's Brief, Plaintiff respectfully submits that the Recommendation should **not** be adopted by the Court with respect to Counts II and IV because

(i) the Magistrate Judge has erroneously applied the “specific and unequivocal” standard to the preservation/retention of such claims, and (ii) even under the unduly stringent and restrictive “specific and unequivocal” standard, such claims were clearly and categorically identified and preserved/retained by the Liquidation Trustee for the benefit of creditors of the Guaranty Financial Group Inc. Debtors.

5. Accordingly, for the reasons stated herein and in Plaintiff’s Brief, Plaintiff requests that Defendants’ Motion to Dismiss be denied in its entirety.

Dated: June 11, 2012

Respectfully submitted,

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***Counsel For Kenneth L. Tepper, In His
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 11, 2012, in accordance with Fed. R. Civ. P. 5(b)(2)(E) and (b)(3) and Local Rule 5.1(d), a true and correct copy of the foregoing pleading was served on the Defendants through their below counsel by electronic transmission through the Court's electronic case filing (ECF) system:

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